

EXPLANATORY MEMORANDUM TO
THE HEALTH AND SAFETY (FEES) REGULATIONS
(NORTHERN IRELAND) 2010

S.R. 2010 No. 60

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and Articles 40(2) and (4), 49 and 55(2) of the Health and Safety at Work (Northern Ireland) Order 1978 (“the 1978 Order”) and is subject to the negative resolution procedure.
- 1.3 The Rule is due to come into operation on 1st April 2010.

2. Purpose

- 2.1 The Statutory Rule will effect an annual up-rating of health and safety fees by revoking and replacing the Health and Safety (Fees) Regulations (Northern Ireland) 2009 (S.R. 2009 No.132) (“the 2009 Regulations”).
- 2.2 The Rule will revoke and re-enact current fee setting provisions in approximately half of fixed-fee cases with increased rates. The Regulations will continue to provide a single point of reference for health and safety fees.

3. Background

- 3.1 Article 40(2) of the 1978 Order allows for Regulations to provide for fees, fixed or determined under the Regulations, to be payable for or in connection with the performance by or on behalf of an authority referred to in Article 40(3) (which includes the Health and Safety Executive for Northern Ireland (HSENI)) of any function conferred on that authority by or under any of the relevant statutory provisions.
- 3.2 HSENI’s policy is to charge for a range of activities collectively described as “permissioning” work. This allows the duty holder – for example – to trade in a dangerous substance or carry out work in hazardous conditions, once HSENI is satisfied with the control mechanisms in place.
- 3.3 “Permissioning” activities which are charged for include assessing and accepting safety cases, issuing licences, issuing certificates, granting approvals, granting exemptions from regulations and accepting notifications.

- 3.4 HM Treasury guidance requires recovery for chargeable statutory functions. Fees are reviewed annually with a new set of Regulations created to reflect any changes. HSENI consults on proposed changes each year.

4. Content

- 4.1 The Statutory Rule fixes or determines the fees payable by an applicant to, in most cases, HSENI, in respect of an application made for: —

- a licence under the Petroleum (Consolidation) Act (Northern Ireland) 1929 (1929 c. 13 (N.I.)) and for the transfer of a licence under the Petroleum (Transfer of Licences) Act (Northern Ireland) 1937 (1937 c. 4 (N.I.));
- a licence under the Control of Asbestos Regulations (Northern Ireland) 2007 (S.R. 2007 No. 31) and for the re-assessment of whether to grant an application for an asbestos licence and for amendments to, and replacements of lost, asbestos licences;
- an approval of a scheme or programme under the Freight Containers (Safety Convention) Regulations (Northern Ireland) 1992 (S.R. 1992 No. 2);

and in respect of—

- a notification or application under the Genetically Modified Organisms (Contained Use) Regulations (Northern Ireland) 2001 (S.R. 2001 No. 295).

- 4.2 The Rule also: -

- fixes fees to be paid in respect of medical examinations and surveillance by an employment medical adviser, which are required under certain of the relevant statutory provisions;
- fixes or determines the fees payable by specified persons in the offshore and gas industries for the performance by HSENI of the functions specified in those provisions and in relation to general health and safety functions at those sites; and
- fixes or determines fees for work done by HSENI in relation to the enforcement of general health and safety functions conferred by the 1978 Order relating to the transportation of gas through “major accident hazard pipelines”, including where such work is not directly concerned with protecting persons from the risks arising from the manner in which gas is conveyed or used.

5. Consultation

- 5.1 A consultation exercise ran from 19 October 2009 to 11 January 2010. There were approximately 600 consultees, including individuals and bodies representative of section 75 of the Northern Ireland Act 1998 and other organisations with an interest in equality and related issues

(including each member of the Northern Ireland Assembly). No adverse comments were received in relation to the proposed Statutory Rule.

6. Equality Impact

6.1 The Statutory Rule has been screened for any possible impact on equality of opportunity affecting the groups listed in section 75 of the Northern Ireland Act 1998 and no adverse or differential aspects were identified.

7. Regulatory Impact

7.1 A full regulatory impact assessment was not prepared on this Statutory Rule. As fees remain the same or are increased in line with inflation the impact on Northern Ireland business will not be significant. There is no impact on charities, social enterprise or voluntary bodies.

8. Financial Implications

8.1 The Statutory Rule will have little effect on business as the fees either remain the same or are increased in line with inflation. There are no cost implications for HSENI.

9. Section 24 of the Northern Ireland Act 1998

9.1 The Department has considered the matter of Convention rights and is satisfied that there are no matters of concern.

10. EU Implications

10.1 None. This Statutory Rule does not implement any European Directives.

11. Parity of Replicatory Measure

11.1 In Great Britain the corresponding Statutory Instrument is the Health and Safety (Fees) Regulations 2009 (S.I. 2009/515), which was made on 5 March 2009 and came into force on 6 April 2009.

11.2 Since the same cost factors generally apply in Northern Ireland, the fees contained in the Northern Ireland Statutory Rule are in the main the same as those already in force in Great Britain.

12. Additional Information

12.1 The Statutory Rule contains a saving provision, at regulation 12(3), specifically to provide that amendments made to the Control of Major Accident Hazards Regulations (Northern Ireland) 2000 (S.R. 2000 No.93) by regulation 12 of the 2009 Regulations continue to have effect.